IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

MFA.No. 623 of 2001()

OA.36/1999 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANT:

ANIL KUMAR, S/O.RAGHAVAN,
PERUNGOTTUKURUSSI, ALATHUR TALUK.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.JOJI VARGHESE
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS:
---

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. CUSTODIAN OF VESTED FOREST,
ARANYA BHAVAN, FOREST COMPLEX,
OLAVAKKODE, PALAKKAD.

BY GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18.9.2007, THE COURT ON 18/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 623 OF 20O1

Dated this the 18th day of September, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the appellant who filed application before the Forest Tribunal, when his possession over 12 acres of land was disturbed by the forest officials. The definite contention of the appellant-petitioner was that the property in question is not a forest and therefore it is not vested under Section 3(1) of the Act. It is also contended that even if it is a forest, he is entitled to exemption under Sections 3(2) and 3(3) of the Kerala Private Forest (Vesting and Assignment) Act as it was cultivated land at the time when the Act came into force. It is also found by the Tribunal that the land is not covered by the MPPF Act, even though the property was situated in the erstwhile Malabar State. But, according to the Tribunal, title to the entire property was not proved in Exhibits A1 to A5. But proof of title etc. are needed for proving exemption under Section 3(2) or 3(3). PW2 wife of the appellant and PW3 neighbour of the property gave evidence that property was cultivated even before relevant date. Exhibits A1 to A3 were produced to prove title to the property. But it is contended that the question of exemption under Sections 3(2) and 3 (3) will come only when it is vested under Section 3(1) of the Act. It is

laid down by the Supreme Court in ***Joseph v. State of Kerala*** (2007 (3) KLT 144 (SC)) that the intention of cultivation has to be gathered from the entire surrounding circumstances. The decision of the Supreme Court cited above was not earlier available to the Tribunal. No commission was taken out for finding out whether land was cultivated on the relevant date or whether there was intention to cultivate on the relevant date. There is also no definite finding whether the land is private forest or not. In the circumstances, we remand the matter to the Tribunal for fresh consideration and disposal. Both the parties are free to adduce further evidence before the Tribunal. The Tribunal has to consider whether the land in question is a private forest as defined under the Act. Only if it is a private forest, it will vest under Section 3(1) of the Act. If it is not a private forest, the State will not get power over the land under the Vesting Act. If government land is encroached upon, it is for the State to take proceedings under other relevant Statute. If it is covered under Section 3(1) of the Act, the Tribunal has to consider whether claimants are entitled to exemption under Sections 3(2) and 3(3) of the Act. A commissioner also shall be taken out to find out the present and past position of the property. The parties shall appear before the Tribunal on 10.12.2007.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.623 OF 2001

JUDGMENT

18.9.2007